

**To:** Wester, Barbara[wester.barbara@epa.gov]; White, Quintin[white.quintin@epa.gov]  
**Cc:** Knutson, Jason R - DNR[Jason.Knutson@wisconsin.gov]; Sylvester, Susan - DNR[Susan.Sylvester@wisconsin.gov]; Heilman, Cheryl W - DNR[Cheryl.Heilman@wisconsin.gov]; Williams, Quinn L - DNR[Quinn.Williams@wisconsin.gov]  
**From:** Nyffeler, Robin T - DNR  
**Sent:** Thur 6/16/2016 5:49:35 PM  
**Subject:** Rule Package 5 ( issue 11)

Although the Department was initially told by EPA staff that issue 11 only applies to 40 CFR 122.44(d)1., comments from EPA on our draft rule language were broader and covered 40 CFR 122.44(d)2-9 as well. As we discussed on the last conference call, some of the requirements in (d)2-9 do not apply to state issued permits ( they only apply to EPA issued permits) and other requirements aren't applicable for other reasons ( e.g. only apply to ocean discharges).

Anyway, I said I would provide existing statutory authority for the following requirements:

122.44(d)2.: Each permit must contain additional requirements necessary to: attain or maintain a specified water quality through water quality related limitations. I mentioned in our call this week that I don't understand what this requirement means. Put another way, I don't understand what it adds to 122.44(d)1. The requirements in (d)1 require the imposition of WQBELs when there is reasonable potential. I'm not certain, but I think that 1 (d)2 simply states that a permittee must discharge in compliance with their water quality based limitations? If my interpretation of (d)2 is correct, then state statutes already include this requirement. Wis. Stat. s. 283.89(1) states that if an person discharges in violation of a term or condition of their WPDES permit, then the department shall refer the matter to DOJ for enforcement. Also, Wis. Stat. s. 283.31(4)(a) states that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit. If you need anything further from me on the requirement in s. 122.44(d)2., please let me know.

122.44(d)5: is already covered in Wis. Stat. 283.13(5).

122.44(d)6: is already covered in Wis. Stat. s. 283.31(3)(d)3., (e) and 4.

Given these statutory references, I hope you agree that we have sufficient legal authority for these federal requirements. Please let me know if you ned anything further from me.

Thank you and have a good weekend.

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Robin T. Nyffeler  
Attorney – Bureau of Legal Services  
Wisconsin Department of Natural Resources  
Phone: (608) 266-0024

Fax: (608) 266-6983  
[robin.nyffeler@wisconsin.gov](mailto:robin.nyffeler@wisconsin.gov)



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